

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

DAMIEN HEWLETT,

Plaintiff,

v.

Case No. 24CV0377

JUSTIN THOMSEN, BRANDON FISCHER,
TANNER LEOPOLD, LOGAN GOEHL,
AND BRIDGETT PROSPER,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES

Defendants, Justin Thomsen, Brandon Fischer, Tanner Leopold, Logan Goehl, and Bridgett Prosper, by their attorneys, Wisconsin Attorney General Joshua L. Kaul and Assistant Attorneys General Mmeli Obi and Brandon T. Flugaur hereby answer Plaintiff's complaint (Dkt. 1) as follows:

PARTIES

1. Admit Plaintiff Damien Hewlett is and at all times relevant to this lawsuit was incarcerated at Waupun Correctional Institution (Waupun).
2. Admit Defendants Justin Thomsen, Brandon Fischer, Bridgett Prosper, Logan Goehl, and Tanner Leopold at all times relevant to this lawsuit were employed by Wisconsin Department of Corrections at Waupun.

STATEMENT OF CLAIM

Defendants DENY¹; and AFFIRMATIVELY ALLEGE, on November 5, 2023, Plaintiff Damien Hewlett was strip searched prior to being placed in observation after reporting that he was suicidal/homicidal; a team consisting of Lieutenant Thomsen, Sergeant Leopold, Correctional Officer Bah, Correctional Officer II Goehl, Correctional Officer Zuhlke, and Correctional Officer Prosper on camera was assembled to conduct a staff-assisted strip search after Plaintiff refused to comply with a strip search; continued non-compliance resulted in Lieutenant Thomsen having to use OC spray and a taser to gain compliance; Plaintiff was subsequently given a decontamination shower, strip searched, and evaluated by a Health Services Unit nurse before being placed in observation.

JURISDICTION

Defendants ADMIT jurisdiction is proper in this case, subject to Defendants' claim of sovereign immunity as detailed below.

RELIEF WANTED

Defendants DENY Plaintiff is entitled to any relief he seeks.

JURY DEMAND

Defendants join Plaintiff to demand a jury trial in this matter.

OTHER

Defendants DENY any allegations not specifically admitted to above.

¹ This general denial will be followed by Defendants' Motion for Summary Judgment.

AFFIRMATIVE DEFENSES

1. All or portions of Plaintiff's complaint must be dismissed to the extent that Plaintiff failed to exhaust administrative remedies.

2. To the extent Defendants are named in their personal capacity, all or portions of Plaintiff's complaint must be dismissed pursuant to the doctrine of qualified immunity.

3. To the extent Defendants are named in their official capacity, all or portions of Plaintiff's complaint must be dismissed pursuant to the doctrine of sovereign immunity and the Eleventh Amendment to the United States Constitution.

4. This action may be subject to the requirements, provisions, terms, conditions, and limitations of 42 U.S.C. § 1997e.

5. All or portions of Plaintiff's Amended Complaint must be dismissed to the extent that Plaintiff failed to mitigate damages.

WHEREFORE, the Defendants demand judgment dismissing Plaintiff's Complaint on the merits with prejudice, and for such relief as the Court deems just and proper, including the award of Defendants' reasonable attorney fees and expenses.

Dated: June 27, 2024.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

s/ Mmeli Obi
MMELI OBI
Assistant Attorney General

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